IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13867 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRASINH LALUBHA ALIAS JUVANSINH GOHIL THE BROTHER OF

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13867 of 2004

MR JAYANTI K THORIA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India is filed by the brother of the detenu challenging the detention order passed against

the detenu by District Magistrate, Bhavnagar, on 07th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing detention of detenu as bootlegger within the meaning of the PASA Act. The detenu came to be detained in pursuance of the said order from 07th of August, 2004.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in passing of the order of detention against the detenu. Firstly, the facts of filing three crimes registered against the detenu under the Bombay Prohibition Act and secondly three in-camera statements of the witnesses, whose identity is not disclosed claiming privilege under Section 9(2) of the PASA Act.

3. Three offences came to be registered against the detenu, two at Prohibition Police Station, Bhavnagar and one at Vartej Police Station on June 02, 2004, June 03, 2004 and June 20, 2004 under the Bombay Prohibition Act whereby it was alleged that in first case the detenu was found in possession of 307 bottles, in second case 60 bottles and in third case 384 bottles of foreign liquor. The detaining authority thoroughly examined the investigation papers in these three cases. The detaining authority also relied upon three in-camera statements as recorded by sponsoring authority on July 28, 2004 and as verified by detaining authority on August 5th of 2004. The first witness referred to an incident occurred 25 days before recording of the statement where at about 8.30 p.m. when the witness was going to his residence from his business place, the detenu accosted him and stated that the witness was providing information to the police, due to which, his quantity of foreign liquor was seized by the police. The witness refused the allegation, but the detenu got excited and started beating the witness. Due to which, the crowd was gathered, vehicles stopped, and persons tried to rescue the witness. The detenu took out knife and rushed towards the persons who tried to rescue the witness. The detenu thereafter threatened the witness that if he provided any information to the police, the hands and legs of the witness would be cut off and separated. Due to fear of the detenu, the witness did not prefer any complaint before the Police. The second witness referred an incident occurred before 20 days of recording of his statement. The witness was present at his place of business at 8.30 p.m. when detenu and his accomplices asked to give him some amount because his bulk of foreign

liquor was to be obtained by the detenu. The detenu asked for Rs. 25,000/- by way of loan. The witness refused to give the amount to the detenu. The detenu got excited and started abusing the witness and started beating the witness. On shouting, shop owners of the nearby vicinity were gathered and tried to rescue the witness, but the detenu took out knife from his pant and rushed towards such persons and on account of this, the shop started to close down in near vicinity. The witness escaped to save himself on account of fear of the detenu. The witness did not prefer any complaint before the police. Third witness stated the incident occurred about before 40 days of the recording of his statement. At about 7.00 pm while the witness was present at his stand, the detenu and one of his accomplice approached the witness on motorcycle and asked the witness to take out his vehicle for delivering crates of prohibited liquor. The witness refused and, therefore, the detenu got excited and caught hold of the witness from his neck and started abusing the witness. The witness requested not to abuse but the detenu was further excited and took out chain from his motorcycle and started beating the witness. On shouting for help by the witness, the persons gathered at the place tried to rescue the witness, but the detenu and his accomplice took out knives and rushed towards such persons and, therefore, the shops nearby the place started to close down. While witness was escaping, the detenu threatened that if the witness provided this information to the Police, he would be done to death and his vehicle will be burnt. On account of fear of the detenu, the witness did not prefer any complaint before the police.

4. The detaining authority after considering the above material made available to him, came to the conclusion that the detenu was dealing in storing, selling and transporting the prohibited liquor and was bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the detenu was headstrong person and was of ferocious tendencies. The detaining authority also concluded that the activities of the detenu was prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority also came to the conclusion that the activities of the detenu was required to be prevented forthwith. The detaining authority after taking into consideration other remedies available against the detenu in general law, came to the conclusion that there was no other alternative except to detain the detenu under the PASA Act and hence the detaining authority passed the order of detention against the

detenu which is under challenge in this petition.

5. Learned Advocate Mr. Jayanti K. Thoria for the petitioner and learned AGP Mr.H.M. Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

6. Out of various grounds urged on behalf of the detenu and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the detenu the public order was disturbed and public health was adversely affected.

7. To arrive at the subjective satisfaction that bootlegging activities of the detenu were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must draw a line between the cases falling under "breach of law and order" and breach of public order. The detaining authority also must determine the fall out, reach and impact of the activities of the detenu which determines whether potentiality of the activities alleged, was capable of disturbing the public order. Referring to the three cases filed against the detenu under the Bombay Prohibition Act and going through the investigating papers, it clearly appears that those cases came to be filed against the detenu because he was found in possession of some prohibited liquor in breach of Prohibition Act. Those cases are pending and the detenu shall be tried and may be punished as well, if found guilty, but it is clear that through the investigating papers on which the detaining authority has placed reliance do not disclose such activities of the detenu, impact of which would disturb the larger section of the society or put the public health in danger. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the detenu will be dealt with according to law. Therefore, the act constituting criminal offences registered against the detenu in dealing with prohibited liquor, have no bearing at all on the question of maintenance of public order.

8. The other material which the detaining authority relied upon is in the form of three in-camera statements. While going through these statements, it clearly appears that the incidents narrated in those statements were more individual disputes than to involve society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, from the bare reading, do not disclose capability to disturb the public order nor any widespread danger to society or harm the public health could be inferred from the above statements. These also may be instances of disturbing of law and order and not the public order.

9. In view of the above matter, it clearly appears that there was no credible or cogent material before the detaining authority to come to the conclusion that by the activities of the detenu public order was disturbed or public health was adversely affected. The order under challenge, therefore, is required to be quashed on this ground alone.

10. In the result, the petition is allowed. The order passed by the District Magistrate, Bhavnagar, on 7th of August, 2004, against the detenu in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Ranjitsinh Labhubha alias Juvansinh Gohil is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R.Vora, J.)

p.n.nair